

## **Remarks**

The following remarks are submitted to address all issues in this case, and to put this case in condition for allowance. Applicant amends the claims in this case simply to better define the subject matter of the present invention; no new matter is added in these amendments. After the above amendment, application claims 1-32 are pending in the application. Application claims 1, 26, and 27 are the only independent claims. Applicant has studied the Office Action mailed December 1, 2006 (“Office Action”) and has the following remarks.

### **35 USC § 102**

#### Green

The Examiner rejected claims 1-2, 5-6, 8-12, 16-21, and 25-26 under 35 USC § 102(b) as being anticipated by Green et al., U.S. 5,391,130 (“Green”) and claims 27-32 as anticipated by or rendered obvious in light of Green. The Examiner stated that Green discloses a frame, a first footpad connected to the frame so as to rotate along a first path in a first direction about a first drive axis, a second footpad connected to the frame so as to rotate along a second path in a second direction about a second drive axis, and a resistance mechanism attached to the frame, the resistance mechanism effecting the rotation of the first footpad along the first path and the rotation of the second footpad along the second path, wherein the second path is non-parallel to the first path and wherein the first footpad and the second footpad each move independently of each other. The Examiner applied this contention regarding Applicant’s claim 1 to dependent claims 2-25 thereof, and to independent claim 26.

Applicant respectfully asserts that Green does not show all of Applicant’s claimed elements of the footpads’ movement, specifically the general and continual parallel relationship

between Applicant's footpads. When traveling through their permitted range of motion, Applicant's footpads move only downwardly and laterally; they do not swing to point toward or away from each other, as that would cause the footpads to become nonparallel. Applicant has disclosed this concept throughout Applicant's application, using the concepts of the footpads themselves and the planes through which they extend. See, e.g., p. 10 ll. 2-3 ("[T]he planes would maintain a fairly constant relationship with each other."); p. 19 ll. 5-7 ("The feet start out generally parallel to each other . . . . One foot is then pushed by the user to the side and downward."); p. 19 ll. 13-15 ("[D]uring the exercise the two planes will generally stay at a relative consistent distance between them while both are translated in space."); p. 20 ll. 12-13 ("To perform this type of exercise, the footpad assembly (907) or (909) moves outward and downward relative to the position of the other footpad assembly (907) or (909); FIG. 17.

Applicant respectfully contends that Green does not show Applicant's element of the generally parallel relationship between the footpads, claimed in amended claims 1 and 26 herein. Green relies on altering the angular relationship between Green's footpads in order to accomplish Green's ice-skating motion. Green's footpads move downwardly, laterally, *and* rotationally, in that the heel of the footpad engaged in a downstroke swings outwardly at the end of the downstroke. Green, col. 2 l. 67 - col. 3 l. 2 ("As will be observed, the foot pad moves in an arc to the rear and the outside during this movement. This simulates the actual path of foot movement during ice skating."); FIG. 2. This necessarily requires alteration of the angular relationship between Green's footpads, between generally parallel and generally angular as each downstroke results in that footpad's heel swinging outward while the upstroke footpad's heel remains generally medial. Thus, Applicant respectfully concludes, Green does not show, and in

fact claims the opposite of, Applicant's claimed general parallel relationship between Applicant's footpads.

Because Green does not show Applicant's independently claimed element of a generally parallel relationship between Applicant's footpads, by virtue of Green's outwardly swinging footpad heel and ice-skating motion, Green does not anticipate independent claims 1 or 26. Therefore, Applicant respectfully asserts that all dependent claims therefrom, specifically 2-25, are similarly not anticipated by Green.

The Examiner then rejected claims 27-31 under 35 USC § 102(b) as being anticipated by Green. The Examiner stated that Green discloses a method of exercising comprising providing an exercise machine including a frame, a pair of footpads movably mounted on the frame so that each of the footpads can move independently of one another, placing a foot on the first and second footpads, and moving the first human foot and the second human foot interchangeably in a manner so planes created by the toe, heel, and calf of each foot are both translated relatively simultaneously along a path non-parallel to the planes. The Examiner applied this contention regarding Applicant's claim 27 to dependent claims 28-32 thereof.

As with claims 1-26, Applicant respectfully asserts that Green does not teach the claimed element of the generally parallel relationship between the first and second human feet moving in the manner claimed in the method. Feet utilizing Green's footpads necessarily become nonparallel to each other, in that the heel of the foot engaged in a downstroke swings outwardly at the end of the downstroke. Green, col. 2 l. 67 - col. 3 l. 2 ("As will be observed, the foot pad moves in an arc to the rear and the outside during this movement. This simulates the actual path of foot movement during ice skating."); FIG. 2. Thus, Applicant respectfully concludes, Green does not show, and in fact claims the opposite of, Applicant's claimed general parallel

relationship between the feet in Applicant's method. Green therefore does not anticipate independent claim 27 or any dependent claim therefrom, specifically claims 28-32.

### Gresko

The Examiner rejected claims 1, 4, 8, and 10 under 35 USC 102(b) as being anticipated by Gresko, stating that Gresko discloses a frame, a first footpad connected to the frame so as to rotate along a first path in a first direction about a first drive axis, a second footpad connected to the frame so as to rotate along a second path in a second direction about a second drive axis, and a resistance mechanism attached to the frame, the resistance mechanism effecting the rotation of the first footpad along the first path and the rotation of the second footpad along the second path, wherein the second path is non-parallel to the first path and wherein the first footpad and the second footpad each move independently of each other.

Applicant respectfully asserts that Gresko does not teach the claimed element of independent movement of the first footpad and the second footpad as relative to each other. Each of Gresko's embodiments shows a "lock block" to which each footpad is engaged by means of a tab and locking recess assembly. The lock block assembly retains the footpads in a parallel or opposed position relative to each other. Gresko, col. 3, ll. 32-48; FIGS. 2-6. Thus, Gresko's two footpads do not move independently of each other: they are joined by the lock block assembly, which dictates their relationship to each other. Gresko does not teach any means by which the footpads may be joined by the lockblock and yet move independently of each other. As such, Applicant respectfully contends, Gresko does not teach independent movement of the footpads, but rather, movement constrained by the footpads' joinder to each

other by the lock block. As such, Gresko does not anticipate independent claim 1 or dependent claims 4, 8 or 10 therefrom.

**35 USC 103(a)**

The Examiner contends that Green in view of, in turn, Bond, Wolfe, Jerome, and Jerome further in view of Webb, renders obvious claims 3, 14-15, 22, and 23-24. In each rejection, the Examiner relies on the contention that “Green teaches the claimed invention” except for certain elements in the dependent claims the Examiner contends are taught by a different patent.

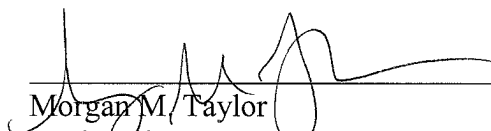
As explained above, Applicant respectfully contends that Green does not, in fact, teach the claimed invention, as Green does not teach footpads that have a generally parallel relationship with each other. None of the secondary patents asserted by the Examiner provide for this omission, nor does the Examiner assert such teachings. Therefore, Applicant respectfully contends, claims 3, 14-15, 22, and 23-24 are nonobvious in light of Green in view of the patents asserted by the Examiner.

Applicant submits with this application the fees for two months’ extension of time due in connection with the filing of this Response. Applicant believes no additional fees are due. However, the Commissioner is hereby authorized to charge or credit to our Deposit Account, No. 50-0975, any additional fees due in connection with the filing of this Response.

If there are any questions regarding this Response, the Examiner is invited to contact the undersigned at (314) 444-1316.

Respectfully submitted,  
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FILED: May 1, 2007



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